

REMARKS

This communication is in response to the non-final official action mailed on April 10, 2006. In this response, claims 1 - 61 are presented without amendment. Reexamination and reconsideration of the above-captioned application pursuant to and consistent with 37 C.F.R. § 1.112, in light of the remarks which follow, are respectfully requested.

The examiner rejected claims 1 - 61 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Cottard (U.S. Application No. 2001/0023515) in view of Riedel (U.S. Patent No. 6,156,296). Applicants respectfully traverse each of the examiner's arguments.

Foremost, applicants disagree with the examiner's contention that there is sufficient teaching, suggestion, or motivation for one skilled in the art to combine Cottard and Riedel. Cottard teaches compositions for oxidative dyeing of keratin fibers comprising an oxidation dye, a thickening polymer having a fatty chain, and a fatty alcohol having more than twenty carbon atoms. Cottard does not, however, teach the use of α -hydroxycarboxylic acids, in conjunction with hair dyeing compositions, a point which the Patent Office concedes. Nor does Cottard provide any suggestion or motivation, either explicitly or implicitly, that such acids could be or should be combined with the hair dye compositions it discloses. Indeed, there are no references in Cottard to any α -hydroxycarboxylic acid compounds having chemical formulas similar to the compounds of Formula (I).

While α -hydroxycarboxylic acids are known in the cosmetic industry, the art of record suggests that such acids, in particular those of Formula (I), are not combined with hair dye compositions. Indeed, the prior art fails to suggest the desirability of combining α -hydroxycarboxylic acids with hair

dye compositions. As such, the Patent Office's contention that one of skill in the art would be motivated to modify Cottard with the α -hydroxycarboxylic acids of Riedel is unsupported on this record. All that the Patent Office has done was find individual elements of the claimed invention in discrete prior art references and using only applicants' disclosure as a guide, argued that the teaching if combined, would produce the invention. Such a hindsight reconstruction is not permitted and does not constitute a *prima facie* case.

Further, even if the α -hydroxycarboxylic acids disclosed in Riedel were combined with the hair dyeing compositions of Cottard, there is no reasonable expectation of success that such a combination would yield the claimed invention. The examiner contends that one skilled in the art could "arrive at the claimed invention with [a] reasonable expectation of success to care for the individual hair as well as improving the appearance of the hair and would expect such a [combination] to have similar properties to those claimed." Official Action, page 4. Aside from these mere conclusory statements, the Patent Office fails to provide any basis for their assumption that an α -hydroxycarboxylic acid and dye combination would result in a hair dye composition or product having similar properties to the claimed invention. In fact, the Patent Office provides no basis for one to even speculate that such a combination would have desirable properties or that such a combination would even be capable of functioning as a hair dye product. As with all chemical systems, merely adding a component useful in one application, does not necessarily mean that that component will yield desirable properties when combined with another application. As such, the rejection should be withdrawn and claims 1 - 58 should be placed in a condition for allowance.

Finally, Riedel actually teaches away from the use of α -hydroxycarboxylic acids in hair dye compositions. Riedel does not teach the use of α -hydroxycarboxylic acids in conjunction with hair dye compositions or products. Indeed, it actually discloses "shampooing compositions which are used when rinsing the hair...before or after coloring or bleaching" treatments. Riedel, col. 10, ll. 26-34. Clearly, Riedel cannot teach the contemporaneous use of α -hydroxycarboxylic acids and hair dyes when it specifically discloses the use of such acids only before or after the use of dyeing products. Therefore, Riedel teaches away from the use of α -hydroxycarboxylic acids in conjunction with hair dyes compositions. Accordingly, the examiner should withdraw the obviousness rejection with respect to claims 1 - 58.

With regard to the method claims, neither Cottard nor Riedel teach applying the combination of hair dyes and α -hydroxycarboxylic acids to hair. While Cottard does disclose a method of applying a composition to keratin fibers comprising a first composition comprising an oxidation dye and a second composition comprising a developer, such a method does not teach or suggest applying an α -hydroxycarboxylic acid in conjunction with a dye or developer. Similarly, while Riedel teaches a method of caring for hair comprising applying one or more phytosterols and an α -hydroxycarboxylic acid, such a method does not teach or suggest combining an α -hydroxycarboxylic acid with a hair dye. As such, the examiner's *prima facie* case with regard to the method claims fails and the rejection of claims 59 and 60 should be withdrawn.

Similarly, neither Cottard nor Riedel teach ready-to-apply kits or devices containing a combination of dyes and α -hydroxycarboxylic acids. While Cottard does disclose a "kit" or device containing a first compartment having an oxidation dye and a second compartment having an oxidizing agent, Cottard does

not teach or suggest a "kit" containing an α -hydroxycarboxylic acid. Moreover, Riedel does not teach "kits" or devices and certainly does not suggest that α -hydroxycarboxylic acids could be combined with hair dye kits. As such, the examiner's rejection of claim 61 should be withdrawn.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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